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CENTRAL INTELLIGENCE AGENCY

WASHINGTON, D.C. 20505

General Counsel

1 December 1988

Judge,

Attached is the memorandum you requested on the Drug Czar provisions of the recently enacted Omnibus Drug Control Bill. It attempts to capture the range of views on the subject. One piece of evidence that it has succeeded in doing so is that persons on both sides of the issues discussed have told me that the memorandum does not present their views strongly enough.

Because you have asked the Ex Dir to review existing proposals for reorganization and make recommendations to you, this memorandum does not attempt to resolve the question of how best to organize CIA, and the Intelligence Community, to approach the counternarcotics problem. Until those decisions are made, it is probably premature to make any firm decisions on how CIA and the Intelligence Community should deal with the Drug Czar. Nonetheless, I thought it useful for you to be aware of the range of alternatives and begin thinking about the issues discussed in this memorandum.

Please advise if you would like further information on the Act or the range of alternatives.


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ER 88-4273X

16 November 1988

MEMORANDUM FOR: Deputy Director for Intelligence
Deputy Director for Science and Technology
Inspector General
Comptroller
Director of Public Affairs
ADDO
DC/ICS
NIO/CN

FROM: Russell J. Bruemmer
General Counsel

John L. Helgerson
Director of Congressional Affairs

SUBJECT: Anti-Drug Abuse Act of 1988

1. The DCI has requested that we take the lead in considering the implications of the "drug czar" provisions of the recently enacted Anti-Drug Abuse Act of 1988 and presenting him with options and alternatives for implementing the Act. To begin that process, we are convening a meeting at 3:30 p.m. on 21 November in the DCI Conference Room.

2. At that meeting, OGC/OCA will provide a briefing on the drug czar provisions of the Act, including identification of open or ambiguous issues. We will also be discussing the preparation of an options paper for the DCI. Because of the nature of the issues that will be discussed, we request that senior level representation be involved in this discussion.

3. Please advise [redacted] whether you or a designee will attend this discussion. Call one of us if you have any other questions.

[redacted]
Russell J. Bruemmer

[redacted]
John L. Helgerson

cc: Ex Dir
DDA
✓ SA/DCI
SA/DDCI



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those combined in illegal methamphetamine laboratories, produced extremely hazardous substances.

(5) Illegal drug laboratories have been found in apartments, motel rooms, motor homes, and dwellings in both urban and rural settings.

(6) Cleanup operations undertaken at the site of a seized illegal drug laboratory often neglect residual hazardous wastes which threaten the health of innocent tenants, homeowners, and livestock, as well as the water supply of surrounding communities.

(7) Illegal drug laboratories are hazardous waste producers.

(8) No Federal agency has been granted budgetary authority to provide for the effective disposal and cleanup of hazardous waste produced by illegal drug laboratories.

(9) The failure to cleanup and dispose of hazardous waste produced by illegal drug laboratories presents long-term health hazards.

(1) State and local authorities are currently ill-equipped to effectively cleanup and dispose of hazardous waste produced by illegal drug laboratories.

(c) **ESTABLISHMENT OF TASK FORCE.**—There is established the Joint Federal Task Force on Illegal Drug Laboratories (hereinafter in this section referred to as the "Task Force").

(d) **APPOINTMENT AND MEMBERSHIP OF TASK FORCE.**—The members of the Task Force shall be appointed by the Administrators of the Environmental Protection Agency and the Drug Enforcement Administration (hereafter in this section referred to as the "Administrators"). The Task Force shall consist of at least 6 and not more than 20 members. Each Administrator shall appoint one-half of the members as follows: (1) the Administrator of the Environmental Protection Agency shall appoint members from among Emergency Response Technicians and other appropriate employees of the Agency; and (2) the Administrator of the Drug Enforcement Administration shall appoint members from among Special Agents assigned to field divisions and other appropriate employees of the Administration.

(e) **DUTIES OF TASK FORCE.**—The Task Force shall formulate, establish, and implement a program for the cleanup and disposal of hazardous waste produced by illegal drug laboratories. In formulating such program, the Task Force shall consider the following factors:

(1) The volume of hazardous wastes produced by illegal drug laboratories.

(2) The cost of cleaning up and disposing of hazardous waste produced by illegal drug laboratories.

(3) The effectiveness of the various methods of cleaning up and disposing of hazardous waste produced by illegal drug laboratories.

(4) The coordination of the efforts of the Environmental Protection Agency and the Drug Enforcement Administration in cleaning up and disposing of hazardous waste produced by illegal drug laboratories.

(5) The dissemination of information to law enforcement agencies that have responsibility for enforcement of drug laws.

(f) **GUIDELINES.**—The Task Force shall recommend to the Administration guidelines for cleanup of illegal drug laboratories to protect the public health and environment. Not later than 180 days after the date of the enactment of this Act, the Administration shall formulate and publish such guidelines.

(g) **DEMONSTRATION PROJECTS.**—

(1) The Attorney General shall make grants to, and enter into contracts with, State and local governments for demonstration projects to clean up and safely dispose of substances associated with illegal drug

laboratories which may present a danger to public health or the environment.

(2) The Attorney General may not under this subsection make a grant or enter into a contract unless the applicant for such assistance agrees to comply with the guidelines issued pursuant to subsection (e).

(3) The Attorney General shall, through grant or contract, provide for independent evaluations of the activities carried out pursuant to this subsection and shall recommend appropriate legislation to the Congress.

(h) **AUTHORIZATION OF APPROPRIATIONS.**—There is authorized to be appropriated for the purpose of carrying out this section for fiscal year 1989, \$5,000,000.

(i) **REPORTS.**—After consultation with the Task Force, the Administrators shall—

(1) transmit to the President and to each House of Congress not later than 270 days after the date of the enactment of this Act a report describing the program established by the Task Force under subsection (d) (including an analysis of the factors specified in paragraphs (1) through (5) of that subsection);

(2) periodically transmit to the President and to each House of Congress reports describing the implementation of the program established by the Task Force under subsection (e) (including an analysis of the factors specified in paragraphs (1) through (5) of that subsection) and the progress made in the cleanup and disposal of hazardous waste produced by illegal drug laboratories; and

(3) transmit to each House of Congress a report describing the findings made as a result of the evaluations referred to in subsection (g)(3).

(j) **EFFECTIVE DATE.**—The provisions of this Act shall take effect October 1, 1988, or upon the date of enactment, whichever occurs later.

On page 169, after line 24, insert the following new subsection:

(f) **DESIGNATION OF AUTHORITY.**—The National Forest System Drug Control Act of 1986 is amended by inserting after section 15007 (16 U.S.C. 559f) the following new section:

"SEC. 15008. DESIGNATION AUTHORITY OF SECRETARY OF AGRICULTURE.

"(a) **PURPOSE.**—It is the purpose of this section to authorized the Secretary of Agriculture to take actions necessary, in connection with the administration and use of the National Forest System, including the designation of certain officers or employees of the Forest Service, to make law enforcement operations more efficient.

"(b) **OFFICERS OF OTHER AGENCIES.**—The Secretary of Agriculture is authorized to designate law enforcement officers of any other Federal agency, when the Secretary determines such to be economical and in the public interest, and with the concurrence of that agency to exercise the powers and authorities of the Forest Service while assisting the Forest Service in the National Forest System, or for activities administered by the Forest Service.

"(c) **ACCEPTANCE BY FOREST SERVICE.**—The Forest Service is authorized to accept law enforcement designation from any other Federal or State agency or political subdivision thereof for the purpose of cooperating in the investigations and enforcement of the laws and regulations of any other Federal or State agency or political subdivision thereof, when such investigation or enforcement is mutually beneficial to the Forest System and the cooperating agency, and on the establishment of a memorandum of understanding or other cooperative agreement."

On page 416, line 21, after "number" delete "and" and insert a ",."

On page 416 insert on line 21 after "demographic characteristics," ", socioeconomic, and other relevant characteristics."

On page 416 after line 25, insert "(3) to the extent feasible the percentage of individuals who complete the appropriate course of treatment through programs referred to in paragraph (1) who upon one year after completion require further treatment."

On page 417 of the bill, insert on line 1 after "care" "or treatment"

On page 417 on line 5 after "complete" insert "and fail to complete."

On page 417 after line 25 insert "(12) to the extent feasible information shall be provided to determine whether clients subsequently become involved in criminal activities, drug use, and other information regarding the subsequent drug-related or criminal activities of individuals who have undergone a treatment program."

At the end of subtitle E of Title IV, insert the following new section:

SEC. . DISCUSSIONS ON NEGOTIATIONS FOR AN INTERNATIONAL CRIMINAL COURT.

It is the sense of the Senate that the President should begin discussions with foreign governments to investigate the feasibility and advisability of establishing an international criminal court to expedite cases regarding the prosecution of persons accused of having engaged in international drug trafficking or having committed international crimes. Such discussions shall not include any commitment that such court shall have jurisdiction over the extradition of U.S. citizens and shall assume that any international agreement shall recognize the rights and privileges guaranteed to U.S. citizens under the U.S. Constitution.

At the appropriate place in the bill, insert the following new section:

SEC. . The United States shall, in the case of the Chapare Regional Development Project, take the necessary steps to implement expeditiously a new agreement with Bolivia which shall provide for flexibility in achieving coca eradication targets. Such flexibility shall be exercised only to the extent that good faith efforts continue to be made to achieve stated eradication goals.

On page 337:

In lines 15 through 19, strike all between "or" and "procedures".

On page 341, line 25, strike all beginning with "or" through "procedure" on page 342, line 3.

On page 8, line 23, before the ":", insert, "including the Office of Comprehensive School Health Education upon its establishment."

On page 534, line 15, after "agencies" insert ", including Indian public housing authorities."

At the end of Title IV, insert the following:

"Subtitle F—Diplomatic Immunity Abuse Prevention Act"

SEC. 4601. SHORT TITLE.

This subtitle may be cited as the "Diplomatic Immunity Abuse Prevention Act".

SEC. 4602. CRIMES COMMITTED BY DIPLOMATS.

(a) **RECORDS.**—The Foreign Missions Act (title II of the State Department Basic Authorities Act of 1956; 22 U.S.C. 4301 et seq.) is amended by inserting after section 204A the following new section:

"CRIMES COMMITTED BY DIPLOMATS

"SEC. 204B. The Director shall develop and maintain records on each incident in which there is involved an individual with immunity from the criminal jurisdiction of the United States who the Director reasonably believes has committed a serious criminal

nal offense within the United States. Each such record shall include—

"(1) the identity of such individual;

"(2) the nature of the offense committed by such individuals, including whether such offenses were committed against property or persons;

"(3) whether such offense involved reckless driving or driving while intoxicated; and

"(4) the number and nature of all other criminal offenses committed in the United States by such individual."

(b) **REPORT.**—Section 5 of the Diplomatic Relations Act (22 U.S.C. 254a et seq.) is amended—

"(1) by redesignating section 5 as section 5(a); and

"(2) by inserting at the end thereof the following new subsection:

"(b) **CRIMES COMMITTED BY DIPLOMATS.**—

"(1) **REPORT.**—Every 12 months after the date of enactment of this Act, the Secretary of State shall submit to the Congress a report describing—

"(A) the incidents occurring during the preceding 12 months which were recorded under section 204B of the Foreign Missions Act, including the information developed and maintained under such section; and

"(B) the undisputed indebtedness which is owed to an individual or entity within the United States by a mission, members of the mission, or their families and for which repayment is in arrears by more than 6 months.

"(2) **LAW ENFORCEMENT INDIVIDUALS.**—The Secretary of State shall take such steps as may be necessary—

"(A) to educate law enforcement officials on the extent of the immunity from criminal jurisdiction provided to members of a mission and to family members of such members, under the Vienna Convention; and

"(B) to assure that, in the event that an individual entitled to immunity from the criminal jurisdiction of the United States is believed to have committed a serious crime, the relevant law enforcement and prosecutorial officials are fully informed of their rights to investigate, charge and, as warranted, prosecute the offense in question to the extent consistent with criminal immunities established under the Vienna Convention and other applicable international law.

"(3) **DISCOURAGING PROSECUTIONS.**—

"(A) No officer or employee of the Department of State may seek to discourage any investigation, charge, or prosecution by a Federal, State, or local government of—

"(i) an alien who is a member of a mission,

"(ii) a family member of an alien described in clause (i), or

"(iii) any other alien not entitled to immunity from the criminal jurisdiction of the United States.

"(B) No information shall be required to be submitted under paragraph (1) with respect to a specific individual if the Secretary of State determines and, within 30 days after the determination, reports to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate that significant foreign policy considerations or the national security so requires.

"(4) **NOTIFICATION OF DIPLOMATIC CORPUS.**—

The Secretary of State shall notify the members of each mission in the United States of United States policies relating to criminal offenses (particularly crimes of violence) committed by such members and the family members of such members, including the policy of obtaining criminal indictments, requiring such members to leave the country, and declaring such members personal non grata."

SEC. 4602. REGISTRATION AND DEPARTURE PROCEDURES FOR INDIVIDUALS WITH DIPLOMATIC IMMUNITY.

Section 3 of the Diplomatic Relations Act (22 U.S.C. 254a et seq.) is amended by adding at the end thereof the following new subsection:

"(c)(1) The Secretary of State shall develop and implement registration and departure procedures for members of missions, and the family members of such members, in order to identify those individuals in the United States who are entitled to immunity from the criminal jurisdiction of the United States.

"(2) No individual shall enjoy diplomatic consular immunity in the United States if at the time of his proposed accreditation there are pending against such individual charges of a serious criminal offense in any jurisdiction within the United States.

"(3) The Secretary may waive paragraph (2) with respect to an individual if the Secretary determines, and reports to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate within 30 days after such accreditation, that such accreditations is required by significant foreign policy considerations or the national security."

SEC. 4604. WAIVER OF DIPLOMATIC IMMUNITY OR REMOVAL WHEN CHARGED WITH A SERIOUS CRIME.

(A) **IN GENERAL.**—The Foreign Missions Act is amended by inserting after section 204B, as added by section 502(a) of this Act, the following new section:

"WAIVER OF DIPLOMATIC IMMUNITY OR REMOVAL WHEN CHARGED WITH A SERIOUS CRIME

"SEC. 204C. (a) Whenever there is probable cause to believe that an individual who is entitled to immunity from the criminal jurisdiction of the United States may have committed a serious criminal offense (particularly a crime of violence), the Secretary of State shall—

"(1) immediately expel from the United States or request the foreign ministry of the country such individual represents to waive the immunity of that individual;

"(2) through the appropriate United States foreign mission, promptly inform the foreign ministry of the offender's country of the United States Government's intention actively to pursue compensation for all damages resulting from the actions of the offender; and

"(3) if such waiver is denied, immediately declare such individual non grata or ensure the removal from the United States or, when appropriate, declare that the individual's principal sponsor is no longer acceptable as a diplomat or consular representative in the United States if there is a prima facie case against such individual which, absent immunity from criminal jurisdiction, would lead to prosecution.

"(b) The Secretary of State shall notify the Attorney General of each individual entitled to immunity from the criminal jurisdiction of the United States who voluntarily leaves, or is asked to leave, the United States because of that individual's alleged involvement in a serious criminal offense in order to prevent permanently that person from reentering the United States."

(b) **EXCLUSION OF ALIENS PREVIOUSLY INVOLVED IN A SERIOUS CRIMINAL OFFENSE COMMITTED IN THE UNITED STATES.**—Section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)) is amended—

"(1) by striking out the period at the end of paragraph (3) and inserting in lieu thereof "; and"; and

"(2) by adding after paragraph (3) the following new paragraph:

"(34) Any alien with respect to whom the Secretary of State has notified the Attorney General under section 204C of the Foreign Missions Act because of that alien's alleged involvement in an offense defined in section 202(a)(9) of that Act, except that such alien may be admitted to the United States—

"(A) with respect to any proceeding regarding such crime, or

"(B) if the Attorney General, in consultation with the Secretary of State, determines that admitting such individual into the United States is in the national interest."

SEC. 4605. AUTHORITY TO INSTITUTE AND MAINTAIN CRIMINAL PROSECUTIONS.

Section 5(a) of the Diplomatic Relations Act (22 U.S.C. 254(a)), as amended by section 502(b)(1) of this Act, is further amended by inserting before the period at the end of the first sentence the following: ", except that, in the case of a criminal proceeding, prosecution may be instituted and maintained if no measure is taken in derogation of any immunities of any individual who is entitled to immunity from the criminal jurisdiction of the United States".

SEC. 4606. REVIEW OF UNITED STATES POLICY ON DIPLOMATIC IMMUNITY.

The Secretary of State shall review the policy of the United States of providing privileges and immunities to foreign missions, the members of the mission, their families, the diplomatic couriers, and others which result in treatment which is more favorable than the treatment required to be provided under the Vienna Convention on Diplomatic Relations. Within 180 days after the date of enactment of this Act, the Secretary of State shall submit to the Congress a report including recommendations—

(1) for such changes as may be necessary in such United States policy so that such privileges and immunities do not exceed United States treaty obligations; and

(2) to promote the observance of United States law by foreign missions, the members of the mission, their families, the diplomatic couriers, and others.

SEC. 4607. REVIEW OF PROCEDURES FOR ISSUING VISAS TO DIPLOMATS TO THE UNITED STATES AND THE UNITED NATIONS.

In order to ensure conformity with the treatment accorded to United States diplomats by other countries, the Secretary of State, in consultation with the Attorney General, shall review the procedures, and make such changes in the procedures as may be necessary, for issuing nonimmigrant visas to the aliens described in subparagraphs (A) and (G) of section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)). Within 1 year after the date of enactment of this Act, the Secretary of State shall submit to the Congress a report on the results of such review and describing the changes, if any, made in such procedures.

SEC. 4608. LIABILITY INSURANCE TO BE CARRIED BY DIPLOMATIC MISSIONS.

(a) **REQUIREMENT.**—Section 6 of the Diplomatic Relations Act (22 U.S.C. 254e) is amended by adding at the end thereof the following new subsection:

"(d) The Director of the Office of Foreign Missions shall, by regulations, establish, and take such steps as he deems necessary to ensure compliance with, liability insurance requirements which can reasonably be expected to afford adequate compensation for injury to person or property resulting from or arising out of the activities of a mission, members of the mission and their families, and individuals described in section 19 of the Convention on Privileges and Immunities of the United Nations of February 13,

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1946, other than liability relating to risks described in subsection (b)."

(b) **CONFORMING AMENDMENT.**—Subsection (a) of such section is amended by striking out "subsection (b)" and inserting in lieu thereof "subsections (b) and (d)".

SEC. 4609. DIPLOMATIC POUCHES.

The President shall—

(1) take such steps as may be necessary to prevent the use of diplomatic pouches for the illicit transportation of narcotics, explosives, and weapons and any material used to foster terrorism into the United States; and

(2) seek in appropriate fora: the adoption of measures which will ensure that diplomatic pouches are not used to smuggle illicit narcotics, explosives, weapons, and any materials used to foster terrorism.

SEC. 4610. DEFINITIONS.

(a) **FOREIGN MISSIONS ACT AMENDED.**—Section 202(a) of the Foreign Missions Act is amended—

(1) by striking out "and" at the end of paragraph (7);

(2) by striking out the period at the end of paragraph (8) and inserting in lieu thereof a semicolon; and

(3) by adding at the end thereof the following new paragraphs:

"(9) the term 'serious criminal offense' means—

"(A) any felony;

"(B) any crime of violence, as defined in section 16 of title 18, United States Code; or

"(C) reckless driving or driving while intoxicated or under the influence of alcohol or drugs which involves personal injury; and

"(10) the term 'individual entitled to immunity from the criminal jurisdiction of the United States' means any individual who is not subject to such criminal jurisdiction as a result of international obligations of the United States arising from multilateral agreements, bilateral agreements, or international law."

(b) **DIPLOMATIC RELATIONS ACT AMENDED.**—Section of the Diplomatic Relations Act (22 U.S.C. 254a) is amended—

(1) by striking out "and" at the end of paragraph (3);

(2) by striking out the period at the end of paragraph (4) and inserting in lieu thereof "; and"; and

(3) by adding at the end thereof the following new paragraph:

"(5) the term 'serious criminal offense' means—

"(A) any felony"

"(B) any crime of violence, as defined in section 16 of title 18, United States Code; or

"(C) reckless driving or driving while intoxicated or under the influence of alcohol or drugs which involves personal injury; and

"(6) the term 'individual entitled to immunity from the criminal jurisdiction of the United States' means any individual who is not subject to such criminal jurisdiction as a result of international obligations of the United States arising from multilateral agreements, bilateral agreements, or international law."

(c) **DEFINITION OF FAMILY MEMBERS.**—Paragraph (2) of section 2 of the Diplomatic Relations Act (22 U.S.C. 254a) is amended to read as follows:

"(2) the term 'family', subject to further limitation by the Secretary of State where warranted by reciprocity or exceptional circumstances, means—

"(A) the spouse of a member of a mission described in paragraph (1)(A) and his or her unmarried children under 21 years of age, who are not members of some other household, and who reside exclusively in the principal's household, if the spouse or children are not nationals of the United States;

"(B) the spouse of a member of a mission described in paragraph (1)(B) and his or her unmarried children under 21 years of age, who are not members of some other household, and who reside exclusively in the principal's household, if the spouse or children are not nationals or permanent residents of the United States;

"(C) the unmarried children of a member of a mission described in paragraph (1)(A) who are under 23 years of age and attending an institution of higher education on a full-time basis, if they are not nationals of the United States;

"(D) the unmarried children of a member of a mission described in paragraph (1)(B) who are under 23 years of age and attending an institution of higher education on a full-time basis, if they are not nationals or permanent residents of the United States; and

"(E) under exceptional circumstances and with the express advance approval of the Department of State, other persons who are not members of some other household, who reside exclusively in the principal's household, and who are recognized by the sending State as members of the family forming part of the household."

At the appropriate place in the bill, add the following:

Sec. . Sense of the Senate relating to illegal drug activities.

Whereas there has been a severe, cancer-like growth of youth gangs who abuse, transport, and traffic in illegal drugs;

Whereas such youth gangs engage in acts of violence, often on a random basis, resulting in death or serious bodily injury to thousands of people, as well as terrorizing tens of thousands of others; and

Whereas such youth gangs have spread their activities from Southern California to more than 50 cities throughout the United States, thereby clearly indicating that the threat posed by these gangs is national in nature, requiring a strong federal response;

Furthermore, whereas, the nation's insular territories and commonwealths of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Mariana Islands and Palau face the growing threat from drugs, and are on the frontier of illegal drug shipments to the mainland;

Whereas, roughly 80% of the drugs coming to the island of Puerto Rico are for transshipment to the mainland United States, and the two year old drug fighting unit that coordinates Puerto Rico's drug enforcement has seized drugs with a value in excess of \$1.5 billion, most of which otherwise would have flooded the streets of American cities; and

Whereas, the insular governments have demonstrated their commitment to the war on drugs by committing significant resources to this challenge and the Nation must commit itself to further assistance to the insular areas, and to coordinating their efforts with the national anti-drug effort;

Furthermore, whereas, stopping drugs at the source is one of the critical elements of our government's war on drugs; and

Whereas, the State Department's Bureau of International Narcotics Matters Airwing Operations is an important tool of our government's policy against narcotics trafficking.

It is, therefore, the sense of the Senate that the Director of National Drug Control Policy, (the Director), should review the entire drug control problem to determine priorities for new resources or shifting of existing resources, giving particular attention to:

(1) assistance to the insular territorial and commonwealth governments of Puerto Rico, Virgin Islands, Guam, American Samoa, Mariana Islands and Palau;

(2) assistance to the State Department's Bureau of International Narcotics Matters Airwing Operations; and

(3) assistance to control the present and growing threat posed to the nation by youth gangs which traffic in illegal drugs.

Based upon his findings, the Director should consider, as necessary, recommending significant resources in addition to those specifically allocated in this Act, utilizing his authority to reprogram or transfer monies, and requesting a reallocation of monies by the Congress.

At the appropriate place in the bill, insert the following:

SEC. . INCREASED PENALTIES FOR CERTAIN SERIOUS CRACK POSSESSION OFFENSES.

(a) Section 404(a) of the Controlled Substances Act (21 U.S.C. 844(a)) is amended by inserting after the second sentence the following new sentence: "Notwithstanding the preceding sentence, a person convicted under this subsection for the possession of a substance which contains cocaine base shall be fined under title 18, United States Code, or imprisoned not less than 5 years and not more than 20 years, or both, if the conviction is a first conviction under this subsection and the amount of the mixture or substance exceeds 5 grams. If the conviction is after a prior conviction for the possession of such a mixture or substance under this subsection becomes final and the amount of the mixture or substance exceeds 3 grams, or if the conviction is after 2 or more prior convictions for the possession of such a mixture or substance under this subsection become final and the amount of the mixture or substance exceeds 1 gram."

(1) Delete ", or to have used," wherever it appears (page 2 lines 7 & 19, page 3 line 13)

(2) Add at the end the following:

"(d) **EFFECTIVE DATE.**—The amendments in this section shall apply to offenses occurring or completed on or after January 1, 1989 except in cases involving parole where the amendments in this section shall apply upon the date of enactment."

At the appropriate place in the bill, insert the following new section:

SEC. . REVOCATION OF PROBATION, PAROLE, AND SUPERVISED RELEASE FOR USE OR POSSESSION OF A CONTROLLED SUBSTANCE.

(a) **PROBATION.**—(1) Section 3563(a) of title 18, United States Code, is amended by—

(A) striking "and" after the semicolon in paragraph (1);

(B) striking the period at the end of paragraph (2) and inserting "; and"; and

(C) inserting after paragraph (2) the following:

"(3) for a felony, a misdemeanor, or an infraction, that the defendant not possess illegal controlled substances."

(2) Section 3565(a) of title 18, United States Code, is amended by adding at the end thereof the following: "Notwithstanding any other provision of this section, if a defendant is found to be in possession of a controlled substance, thereby violating the condition imposed by section 3563(a)(3), the court shall revoke the sentence of probation and sentence the defendant to not less than one-third of the original sentence."


(b) **SUPERVISED RELEASE.**—(1) Section 3583(d) of title 18, United States Code, is amended in the first sentence by striking the period and inserting "and that the defendant not possess illegal controlled substances."

(2) Section 3583 of title 18, United States Code, is amended by adding at the end thereof the following:

"(g) **USE OF CONTROLLED SUBSTANCES.**—If the defendant is found to be in the possession of a controlled substance the court

20 October 1988
OCA 3509-88




mm MEMORANDUM FOR  Deputy Director of Central Intelligence

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FROM:

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Deputy Director for Legislation
Office of Congressional Affairs

SUBJECT: Omnibus Drug Legislation - Status Report

1. It appears that the "logjam" in negotiations on omnibus, anti-drug legislation has been broken and that a compromise version will be soon ready for House and Senate floor consideration, perhaps as early as this evening.

2. The bill will contain a "drug czar" provision. Our concerns with respect to the czar, however, have been alleviated.

3. This "compromise czar" will be closer in substance to the House "weak czar" than the Senate "strong czar." He will not have budgetary authority nor overwhelming programmatic authority. In addition, the bill will contain a provision protecting intelligence sources and methods and a provision requiring the czar to exercise his authorities in a manner consistent with the the provisions of the National Security Act of 1947. This latter provision addresses our programmatic concerns.

4. We also understand Chairman Stokes may make a statement on the House floor during consideration of the bill to the effect that adoption of the czar provision is not intended to detract from the DCI's budgetary authorities.




OCA/LEG,  (20 October 1988)

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27 September 1988
OCA 3222-88

MEMORANDUM FOR: Director of Central Intelligence
FROM: Deputy Director for Legislation
Office of Congressional Affairs
SUBJECT: Status of Representative Alexander's
"Anti-Stonewalling Act" Amendment

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1. At the last minute, a compromise was proposed on the Alexander "Anti-Stonewalling Act" amendment: Representative Alexander would withdraw the original amendment and a substitute (copy attached), acceptable to both him and the Administration, would be included in the "leadership amendment" to be offered prior to final adoption of the bill.

2. We reviewed the substitute and advised the White House that, although we preferred no legislation on the subject, we could live with the substitute. The bill subsequently passed on 22 September with the substitute amendment being adopted.

3. The provision is open to further dilution and or deletion in Senate or in conference.

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Attachment

OCA/LEG, (27 September 1988)

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1 - ☐ Signer
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CONGRESSIONAL RECORD — HOUSE

September 22, 1988

(5) The dissemination of information to law enforcement agencies that have responsibility for enforcement of drug laws.

(d) **GUIDELINES.**—The Task Force shall recommend to the Administrators guidelines for cleanup of illegal drug laboratories to protect the public health and environment. Not later than 180 days after the date of the enactment of this Act, the Administrators shall formulate and publish such guidelines.

(e) **DEMONSTRATION PROJECTS.**—

(1) The Attorney General shall make grants to, and enter into contracts with, State and local governments for demonstration projects to clean up and safely dispose of substances associated with illegal drug laboratories which may present a danger to public health or the environment.

(2) The Attorney General may not under this subsection make a grant or enter into a contract unless the applicant for such assistance agrees to comply with the guidelines issued pursuant to subsection (d).

(3) The Attorney General shall, through grant or contract, provide for independent evaluations of the activities carried out pursuant to this subsection and shall recommend appropriate legislation to the Congress.

(f) **FUNDING.**—Of the amounts made available to carry out the Controlled Substances Act for fiscal year 1989, not less than \$5,000,000 shall be made available to carry out subsections (d) and (e).

(d) **REPORTS.**—After consultation with the Task Force, the Administrators shall—

(1) transmit to the President and to each House of Congress not later than 270 days after the date of the enactment of this Act a report describing the program established by the Task Force under subsection (c) (including and analysis of the factors specified in paragraphs (1) through (5) of that subsection);

(2) periodically transmit to the President and to each House of Congress reports describing the implementation of the program established by the Task Force under subsection (c) (including an analysis of the factors specified in paragraphs (1) through (5) of that subsection) and the progress made in the cleanup and disposal of hazardous waste produced by illegal drug laboratories; and

(3) transmit to each House of Congress a report describing the findings made as a result of the evaluations referred to in subsection (e)(3).

Page 178, line 14, strike out "\$620,551,000" and insert in lieu thereof "\$625,551,000".

Page 375, after line 2, insert the following:

TITLE XI—INFORMATION ON ILLEGAL FOREIGN DRUG ACTIVITIES

SEC. 11001. COOPERATION BETWEEN AGENCIES AND WITH CONGRESS.

(a) **REQUIREMENT FOR INTERAGENCY COOPERATION.**—Any officer or employee in the executive branch who, in the course of his or her official duties, obtains information about illegal foreign drug activities shall promptly furnish such information, in accordance with the procedures established by the President pursuant to subsection (b)(1), to the head of an agency designed by the President pursuant to subsection (c)(2).

(b) **ESTABLISHMENT OF REPORTING PROCEDURES AND DESIGNATION OF RECIPIENT AGENCIES.**—Not later than 60 days after the date of the enactment of this Act, the President—

(1) shall establish procedures for furnishing information pursuant to subsection (a);

(2) shall designate one or more agencies as an agency to which such information is to be furnished (such agencies to include, as the President determines appropriate, agencies involved in the formulation of United

State foreign policy, agencies involved in the enforcement of Federal drug laws, the agency in which the officer or employee who obtains the information serves or is employed, or other agencies);

(3) shall establish procedures for the sharing of information furnished to an agency pursuant to this section with other agencies, where appropriate; and

(4) shall notify the Congress of the procedures so established and the agencies so designated.

The President shall review such procedures and designations once each year and may, on the basis of the review, change any such procedure or designation, with notification as provided in paragraph (4).

(c) **DEFINITIONS.**—As used in this section—

(1) the term "agency" means a department, agency, or establishment in the executive branch of the Government;

(2) the term "controlled substance" has the same meaning as is provided in section 102 of the Controlled Substances Act (21 U.S.C. 802);

(3) the term "illegal foreign drug activities" means activities occurring primarily outside the United States which, if they occurred in the United States, would be a felony under—

(A) the Controlled Substances Act (21 U.S.C. 801 et seq.) or the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.);

(B) any other Federal law involving controlled substances; or

(C) Subchapter II of chapter 53 of title 31, United States Code (commonly referred to as the "Bank Secrecy Act"), section 1956 or section 1957 of title 18, United States Code (commonly referred to as the "Money Laundering Act"), or any other provision of title 18, United States Code, if the violation is related to illicit production of or trafficking in a controlled substance; and

(4) the term "officer or employee in the executive branch" means an appointed officer or an employee in the executive branch of the Government, and a member of a uniformed service.

Page 2, immediately after the item relating to title X, insert the following:

Title XI—Information on Illegal Foreign Drug Activities

The CHAIRMAN. Without objection, the reading of the amendments will be dispensed with, and the amendments will be printed in the RECORD.

There was no objection.

The CHAIRMAN. Pursuant to the rule, the gentleman from Washington [Mr. FOLEY] is recognized for 30 minutes in support of his amendments.

Mr. FOLEY. Mr. Chairman, I yield 15 minutes to the gentleman from Florida [Mr. McCOLLUM].

Mr. McCOLLUM. Mr. Chairman, I am delighted to accept that, except I was wondering if I could claim the time designated for the gentleman from Illinois [Mr. MICHEL] as his designee.

The CHAIRMAN. The Chair would state under the rule the gentleman from Washington [Mr. FOLEY] is entitled to 30 minutes and the gentleman from Illinois [Mr. MICHEL] is entitled to 30 minutes.

As the Chair understood it, the gentleman from Washington [Mr. FOLEY] was yielding 15 minutes of his time.

Mr. FOLEY. Mr. Chairman, if the Chair will indulge me, I understood

that the total time was half an hour. The Chair is correct; it is half an hour on each side, so I will claim the full 30 minutes, and the gentleman from Florida [Mr. McCOLLUM] can claim the full 30 minutes on his side.

The CHAIRMAN. Without objection, the gentleman from Florida [Mr. McCOLLUM] may control the time of the gentleman from Illinois [Mr. MICHEL].

There was no objection.

The CHAIRMAN. The gentleman from Washington [Mr. FOLEY] will be recognized for 30 minutes and the gentleman from Florida [Mr. McCOLLUM] will be recognized for 30 minutes.

The Chair recognizes the gentleman from Washington [Mr. FOLEY].

Mr. FOLEY. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the amendment before us is offered on my behalf and that of the gentleman from Illinois [Mr. MICHEL], the Republican leader. It includes a number of individual proposals offered by Members on both sides of the aisle which have been consolidated in one package. Each of them has been cleared with not only the gentleman from Illinois [Mr. MICHEL] and myself, but with the leadership of the subcommittees of the various committees involved with this bill.

Mr. Chairman, while I intended to recognize a few Members present on the floor who wish to speak to specific proposals included in this amendment, let me say before doing so that I am deeply appreciative of the cooperation of the gentleman from Illinois [Mr. MICHEL], the Republican leader, and of the leadership of the subcommittees.

In particular I would like to mention the gentleman from New York [Mr. RANGEL] and the gentleman from New Jersey [Mr. HUGHES], as well as the gentleman from Florida [Mr. McCOLLUM] on the Republican side. They have all worked very assiduously on this legislation and have had the principal responsibility for the managing of the bill during its consideration by the House.

Mr. Chairman, I yield 2 minutes to the gentleman from California [Mr. ANDERSON].

(Mr. ANDERSON asked and was given permission to revise and extend his remarks.)

Mr. ANDERSON. Mr. Chairman, there are many questions that have been asked, or need to be asked, about how we deal with the problem of drugs in our country. For example, is urinalysis or any drug analysis reliable? Is random urinalysis without probable cause for suspected drug use constitutional, ethical, or effective? Should an employee be disciplined if his urine tests positive for marijuana as a result of inhaling secondary smoke at a rock concert? Do positive drug test results indicate impairment at work? Regardless of where one stands on the drug

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1 to information about illegal foreign drug activities.

2 (b) REQUIREMENT FOR INTERAGENCY COOPERATION.--Any officer
3 or employee in the executive branch who, in the course of his
4 or her official duties, obtains information about illegal
5 foreign drug activities shall promptly furnish such
6 information, in accordance with the procedures established by
7 the President pursuant to subsection (c)(1), to the head of
8 an agency designated by the President pursuant to subsection
9 (c)(2).

10 (c) ESTABLISHMENT OF REPORTING PROCEDURES AND DESIGNATION
11 OF RECIPIENT AGENCIES.--Not later than 60 days after the date
12 of the enactment of this Act, the President--

13 (1) shall establish procedures for furnishing
14 information pursuant to subsection (b);

15 (2) shall designate one or more agencies as an agency
16 to which such information is to be furnished (such
17 agencies to include, as the President determines
18 appropriate, agencies involved in the formulation of
19 United States foreign policy, agencies involved in the
20 enforcement of Federal drug laws, the agency in which the
21 officer or employee who obtains the information serves or
22 is employed, or other agencies);

23 (3) shall establish procedures for the sharing of
24 information furnished to an agency pursuant to this
25 section with other agencies, where appropriate; and

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1 (4) shall notify the Congress of the procedures so
2 established and the agencies so designated.

3 The President shall review such procedures and designations
4 once each year and may, on the basis of the review, change
5 any such procedure or designation, with notification as
6 provided in paragraph (4).

7 (d) DEFINITIONS.--As used in this section--

8 (1) the term ``agency`` means a department, agency,
9 or establishment in the executive branch of the
10 Government;

11 (2) the term ``controlled substance`` has the same
12 meaning as is provided in section 102 of the Controlled
13 Substances Act (21 U.S.C. 802);

14 (3) the term ``illegal foreign drug activities``
15 means activities occurring primarily outside the United
16 States which, if they occurred in the United States,
17 would be a felony under--

18 (A) the Controlled Substances Act (21 U.S.C. 801
19 et seq.) or the Controlled Substances Import and
20 Export Act (21 U.S.C. 951 et seq.);

21 (B) any other Federal law involving controlled
22 substances; or

23 (C) subchapter II of chapter 53 of title 31,
24 United States Code (commonly referred to as the
25 ``Bank Secrecy Act``), section 1956 or section 1957

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1 of title 18, United States Code (commonly referred to
2 as the ``Money Laundering Act``), or any other
3 provision of title 18, United States Code, if the
4 violation is related to illicit production of or
5 trafficking in a controlled substance; and

6 (4) the term ``officer or employee in the executive
7 branch`` means an appointed officer or an employee in the
8 executive branch of the Government, and a member of a
9 uniformed service.

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(2) Paragraph (1) does not limit the authority of the Secretary to expend Federal funds to administer and provide oversight of the clinical laboratory certification process.

An amendment to be offered by Representative Alexander of Arkansas or his designee to be debatable for not to exceed 20 minutes, equally divided and controlled by the proponent of the amendment and a member opposed thereto.

Page 402, after line 25, insert the following:

TITLE XI—INTERAGENCY COOPERATION RELATING TO INFORMATION ON ILLEGAL FOREIGN DRUG ACTIVITIES

SEC. 11001. SHORT TITLE.

This title may be cited as the "Anti-Stonewalling Act of 1988".

SEC. 11002. INTERAGENCY COOPERATION RELATING TO INFORMATION ON ILLEGAL FOREIGN DRUG ACTIVITIES.

(a) **IN GENERAL.**—Any officer or employee in the executive branch of the Government, who, in the course of the official duties of such officer or employee, obtains information about illegal foreign drug activities shall promptly furnish such information through the head of the agency in which the officer or employee serves or is employed—

(1) to the head of any other agency designated under subsection (b); and

(2) upon request of a committee of the Congress or of the Comptroller General, as the case may be, to such committee or to the Comptroller General.

(b) **DESIGNATIONS.**—Not later than 60 days after the date of the enactment of this Act, the President shall—

(1) designate agencies involved in the formulation of United States foreign policy or the enforcement of Federal drug laws to receive information under subsection (a)(1); and

(2) notify the Speaker and the minority leader of the House of Representatives, the President pro tempore and the minority leader of the Senate, and the Comptroller General of such designations.

The President shall review such designations once each year and may, on the basis of the review, change any designation, with notification as provided in paragraph (2).

(c) **NONDISCLOSURE.**—Except with respect to the disclosure of information to the General Accounting Office, notwithstanding subsection (a), the head of an agency may withhold the disclosure of information that, as determined by the head of the agency—

(1) may jeopardize a United States foreign intelligence or counterintelligence activity or source;

(2) may jeopardize a law enforcement investigation; or

(3) may adversely affect the national defense or security of the United States.

The authority to make such a determination may not be delegated. Any such determination shall be communicated in writing to the President, who may direct the head of the agency to furnish the information under such procedures and safeguards as the President may specify.

(d) **APPLICABILITY OF SECTION 716 OF TITLE 31, UNITED STATES CODE.**—If information requested by the Comptroller General under subsection (a) is not furnished within a reasonable time, section 716 of title 31, United States Code, shall apply to such request.

(e) **DUTY OF THE PRESIDENT.**—In the event the President withholds information from a committee of the Congress for any of the reasons set forth in subsection (c), the President shall transmit in writing to the chairman and ranking minority party member of such committee a statement of the reasons for the decision. If the information concerns a United States foreign intelligence or counterintelligence activity or source, the President shall promptly inform the chairman and ranking minority party member of the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate of the nature of the information withheld. This section does not waive or otherwise alter any right or procedure that the Congress or any committee of the Congress may otherwise have to receive such information.

(f) **DEFINITIONS.**—As used in this section—

(1) the term "officer or employee in the executive branch of the Government" means an appointed officer in the executive branch of the Government, an employee in the executive branch of the Government, and a member of a uniformed service; and

(2) the term "agency" means a dependent, agency, or establishment in the executive branch of the Government.

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House Rept. No. 100-861

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(2) Paragraph (1) does not limit the authority of the Secretary to expend Federal funds to administer and provide oversight of the clinical laboratory certification process.

An amendment to be offered by Representative Alexander of Arkansas or his designee to be debatable for not to exceed 20 minutes, equally divided and controlled by the proponent of the amendment and a member opposed thereto.

Page 402, after line 25, insert the following:

TITLE XI—INTERAGENCY COOPERATION RELATING TO INFORMATION ON ILLEGAL FOREIGN DRUG ACTIVITIES

SEC. 11001. SHORT TITLE.

This title may be cited as the "Anti-Stonewalling Act of 1988".

SEC. 11002. INTERAGENCY COOPERATION RELATING TO INFORMATION ON ILLEGAL FOREIGN DRUG ACTIVITIES.

(a) IN GENERAL.—Any officer or employee in the executive branch of the Government, who, in the course of the official duties of such officer or employee, obtains information about illegal foreign drug activities shall promptly furnish such information through the head of the agency in which the officer or employee serves or is employed—

(1) to the head of any other agency designated under subsection (b); and

(2) upon request of a committee of the Congress or of the Comptroller General, as the case may be, to such committee or to the Comptroller General.

(b) DESIGNATIONS.—Not later than 60 days after the date of the enactment of this Act, the President shall—

(1) designate agencies involved in the formulation of United States foreign policy or the enforcement of Federal drug laws to receive information under subsection (a)(1); and

(2) notify the Speaker and the minority leader of the House of Representatives, the President pro tempore and the minority leader of the Senate, and the Comptroller General of such designations.

The President shall review such designations once each year and may, on the basis of the review, change any designation, with notification as provided in paragraph (2).

(c) NONDISCLOSURE.—Except with respect to the disclosure of information to the General Accounting Office, notwithstanding subsection (a), the head of an agency may withhold the disclosure of information that, as determined by the head of the agency—

(1) may jeopardize a United States foreign intelligence or counterintelligence activity or source;

(2) may jeopardize a law enforcement investigation; or

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The authority to make such a determination may not be delegated. Any such determination shall be communicated in writing to the President, who may direct the head of the agency to furnish the information under such procedures and safeguards as the President may specify.

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(f) DEFINITIONS.—As used in this section—

(1) the term "officer or employee in the executive branch of the Government" means an appointed officer in the executive branch of the Government, an employee in the executive branch of the Government, and a member of a uniformed service; and

(2) the term "agency" means a dependent, agency, or establishment in the executive branch of the Government.

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OCA 88-3001
8 September 1988

MEMORANDUM FOR: The Director

FROM: John L. Helgerson
Director of Congressional Affairs

SUBJECT: "Anti-Stonewalling" Amendment

1. The letter that you and the Attorney General have now signed opposing the "Anti-Stonewalling" amendment will be delivered by the White House to all House Members in their morning mail. In talking with the Legislative Affairs people at the White House, we both believe it would be useful for you and the Attorney General to call personally as many key Members as possible to underscore our reservations about that amendment.



2. I have made no commitment to the White House but would recommend that you call as many of the following as you feel comfortable doing:

Majority Leader Tom Foley
Minority Leader Bob Michel
HPSCI Chairman Louis Stokes
HPSCI Ranking Minority Member Henry Hyde
Foreign Affairs Chairman Dante Fascell
Foreign Affairs Ranking Minority Member Bill Broomfield

3. With the Republicans we can expect that they will oppose the amendment but it would be good to invigorate them. With the Democrats we can reasonably hope to talk them into sitting on the sidelines. Our hopes for defeating the amendment rest on the Democratic leaders' willingness to refrain from making it a partisan issue.

4. The many amendments to the Omnibus Drug Bill are now being considered on the House floor. At the current pace it is likely that the Alexander amendment will be addressed late Friday afternoon.

5. I have attached talking points for your use in making these calls.


John/L. Helgerson


Attachment

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OCA 2983/88



Office of the Attorney General
Washington, D. C. 20530

8 September 1988

The Honorable Jim Wright
Speaker
House of Representatives
Washington, D. C. 20515

Dear Mr. Speaker:

The Administration strongly supports and urges Congress to act swiftly to adopt effective and responsible legislation to combat drug abuse. United States law enforcement and intelligence agencies have devoted and will continue to devote substantial efforts toward achievement of the vital national objective of halting the flow of illegal drugs.

The amendment proposed to be offered by Congressman Bill Alexander to the Omnibus Drug Initiative Act of 1988 (H.R. 5210) will weaken the hand of the United States in the battle against illegal drugs. The Alexander Amendment is both unwise and impermissibly encroaches on the President's constitutional authority.

The amendment requires Executive Branch personnel obtaining information about "illegal foreign drug activities" to forward such information promptly to the head of their agencies. In turn, the agency heads must furnish it to law enforcement agencies specially designated by the President and, upon request, to any committee of the Congress or the General Accounting Office (GAO). If the agency head personally determines that disclosure of the information risks specified damage to national security or law enforcement interests, he need not disclose the demanded information to a congressional committee, but he nevertheless must furnish it to the GAO. The amendment also provides for lawsuits by the GAO against Federal agencies to secure information covered by its provisions.

The Alexander amendment would diminish the ability of the United States to collect narcotics intelligence. Sources of foreign narcotics intelligence, including cooperating foreign government agencies, would be less likely to share sensitive narcotics intelligence with U.S. agencies if it must be disseminated on demand to the General Accounting Office and, in

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many cases, to multiple congressional committees. The proper executive-legislative arrangements for handling sensitive narcotics intelligence in a responsible and secure fashion are those specified by Title V of the National Security Act of 1947, under which the Director of Central Intelligence and the heads of intelligence agencies keep the congressional intelligence committees fully and currently informed of intelligence activities, including narcotics intelligence.

The prospect of lawsuits between the GAO and intelligence agencies over some of the most sensitive national security information in the possession of the United States presents a substantial danger of unauthorized disclosure of sensitive information. Congress recognized this danger when it enacted the General Accounting Office Act of 1980 that provided for the exemption of intelligence information from the GAO's current authority to bring suits to obtain information.

The inter-agency reporting requirements established by the amendment will disrupt effective, carefully crafted mechanisms for secure dissemination of narcotics intelligence within the U.S. Government. These mechanisms ensure that sensitive narcotics intelligence is disseminated to law enforcement agencies and that the information is properly protected from unauthorized disclosure.

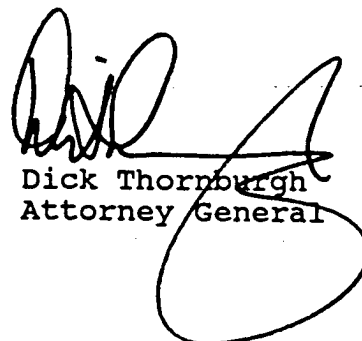
In addition to its practical flaws, the amendment impermissibly encroaches on the powers of the President under the Constitution to faithfully execute the laws, to supervise his subordinates in the Executive Branch, to preserve the integrity of executive deliberations, and to protect national security information.

We urge the House not to adopt the Alexander Amendment.

Sincerely,



William H. Webster
Director of Central Intelligence



Dick Thornburgh
Attorney General

cc: The Honorable Bill Alexander

SUBJECT: "Stonewalling Act" Proposed by Congressman
Bill Alexander (H.R. 5210)

Distribution: (OCA 2983/88)

Original - Rep. Jim Wright

1 - Rep. Alexander

1 - David Addington/White House

1 - Greg Jones, OMB

1 - Mike Wermuth, DOJ

1 - DCI

1 - DDCI

1 - ER

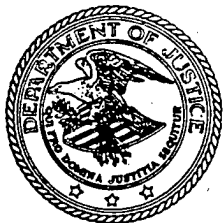
1 - D/OCA

1 - OCA Registry

1 - OCA/Leg

STAT

OCA 2983/1 88



Office of the Attorney General
Washington, D. C. 20530

8 September 1988

The Honorable Robert H. Michel
Minority Leader
U. S. House of Representatives
Washington, D. C. 20515

Dear Mr. Leader:

The Administration strongly supports and urges Congress to act swiftly to adopt effective and responsible legislation to combat drug abuse. United States law enforcement and intelligence agencies have devoted and will continue to devote substantial efforts toward achievement of the vital national objective of halting the flow of illegal drugs.

The amendment proposed to be offered by Congressman Bill Alexander to the Omnibus Drug Initiative Act of 1988 (H.R. 5210) will weaken the hand of the United States in the battle against illegal drugs. The Alexander Amendment is both unwise and impermissibly encroaches on the President's constitutional authority.

The amendment requires Executive Branch personnel obtaining information about "illegal foreign drug activities" to forward such information promptly to the head of their agencies. In turn, the agency heads must furnish it to law enforcement agencies specially designated by the President and, upon request, to any committee of the Congress or the General Accounting Office (GAO). If the agency head personally determines that disclosure of the information risks specified damage to national security or law enforcement interests, he need not disclose the demanded information to a congressional committee, but he nevertheless must furnish it to the GAO. The amendment also provides for lawsuits by the GAO against Federal agencies to secure information covered by its provisions.

The Alexander amendment would diminish the ability of the United States to collect narcotics intelligence. Sources of foreign narcotics intelligence, including cooperating foreign government agencies, would be less likely to share sensitive narcotics intelligence with U.S. agencies if it must be disseminated on demand to the General Accounting Office and, in

- 2 -

many cases, to multiple congressional committees. The proper executive-legislative arrangements for handling sensitive narcotics intelligence in a responsible and secure fashion are those specified by Title V of the National Security Act of 1947, under which the Director of Central Intelligence and the heads of intelligence agencies keep the congressional intelligence committees fully and currently informed of intelligence activities, including narcotics intelligence.

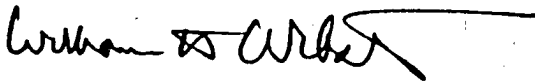
The prospect of lawsuits between the GAO and intelligence agencies over some of the most sensitive national security information in the possession of the United States presents a substantial danger of unauthorized disclosure of sensitive information. Congress recognized this danger when it enacted the General Accounting Office Act of 1980 that provided for the exemption of intelligence information from the GAO's current authority to bring suits to obtain information.

The inter-agency reporting requirements established by the amendment will disrupt effective, carefully crafted mechanisms for secure dissemination of narcotics intelligence within the U.S. Government. These mechanisms ensure that sensitive narcotics intelligence is disseminated to law enforcement agencies and that the information is properly protected from unauthorized disclosure.

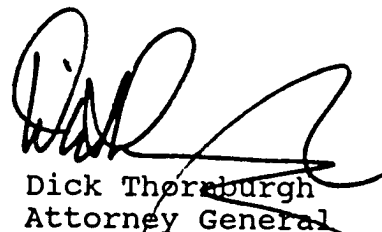
In addition to its practical flaws, the amendment impermissibly encroaches on the powers of the President under the Constitution to faithfully execute the laws, to supervise his subordinates in the Executive Branch, to preserve the integrity of executive deliberations, and to protect national security information.

We urge the House not to adopt the Alexander Amendment.

Sincerely,



William H. Webster
Director of Central Intelligence



Dick Thornburgh
Attorney General

cc: The Honorable Bill Alexander

SUBJECT: "Stonewalling Act" Proposed by Congressman
Bill Alexander (H.R. 5210)

Distribution: (OCA 2983/1 88)

Original - Rep. Robert Michel
1 - Rep. Bill Alexander
1 - David Addington/White House
1 - Greg Jones, OMB
1 - Mike Wermuth, DOJ
1 - DCI
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1 - D/OCA
1 - OCA Registry
1 - OCA/Leg

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OCA 88-3002
8 September 1988

MEMORANDUM FOR: The Director

FROM: John L. Helgerson
Director of Congressional Affairs

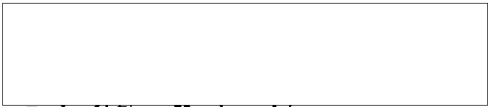
SUBJECT: Joint Letter on "Anti-Stonewalling Act"
Amendment


1. David Addington, Deputy Assistant to the President for Legislative Affairs, has crafted the attached letter concerning the "Anti-Stonewalling" Amendment. The White House urges that the Attorney General and you sign it and have it delivered to the Speaker today as various amendments to the Omnibus Drug Bill are now being considered by the House.

2. I recommend you agree to sign this letter. I have left a copy with Russ Bruemmer to be sure he has no problem. Although brief, it makes the important points and avoids the long and complicated explanation of constitutional issues that Justice had wanted to include.

3. The White House has asked that the original of the letter be produced by the Attorney General's office as he is the Senior Cabinet level signer. Once he has signed this afternoon, the letter will come here for your signature and forwarding to Congress.

4. ~~Please let me know quickly if I may communicate your approval of this draft to get the process in motion.~~


John L. Helgerson

Attachment 

D/OCA/JLH:  (8 Sep 88)

Distribution:

- Original - DCI
- 1 - DDCI (w/att)
- 1 - EXDIR (w/att)
- 1 - ER (w/att)
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- 1 - JLH Chrono (w/att)
- 1 - Reader Library

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ROUTING AND RECORD SHEET

SUBJECT: (Optional)

Sen. Byrd's letter regarding Drug Czar portion of the Omnibus Anti-Drug Legislation

FROM:

John L. Helgerson
Director of Congressional Affairs

EXTENSION

NO:

OCA 2950-88

DATE

02 SEP 1988

TO: (Officer designation, room number, and building)

DATE

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FORWARDED

OFFICER'S
INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

1. Executive Registry

2.

3. Executive Director

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5. Deputy Director of
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Washington, D.C. 20505

06 SEP 1988

The Honorable Robert C. Byrd
Majority Leader
United States Senate
Washington, D.C. 20510

Dear Senator Byrd:

I write as head of the Intelligence Community to express my concern about the "drug czar" portion of the omnibus, anti-drug legislation currently being drafted in the Senate.

When the Congress created the Drug Policy Board in 1984, it adopted a provision that preserved, vis-a-vis the Board, the authorities of the Director of Central Intelligence (DCI) in the areas of program and budget management and intelligence information protection: 21 U.S.C. §1203(d). When "drug czar" legislation was again introduced in this Congress, many of the bills (including S. 15 and S. 789) contained provisions virtually identical to 21 U.S.C. §1203(d).

Recent drafts of the bipartisan staff working group on the "drug czar" portion of the omnibus bill, however, indicate that while the "intelligence information protection" aspect of existing law was retained, DCI program and budget management authorities were deleted.

I commend the recognition of the importance of protecting sensitive intelligence information. I ask, however, that 21 U.S.C. §1203(d) in its entirety be restored to the bipartisan draft and preserved in any final legislation on this subject.

As you know, the position of DCI was created after World War II in recognition of lessons, painfully learned, that intelligence activities must be centrally directed. These lessons are as cogent today as they were some forty years ago. Indeed, the size and complexity of the demands placed upon the

Intelligence Community to support our nation's policymakers make it even more important that the DCI retain his authorities to manage Community programs and allocate budgetary resources accordingly.

I recognize the importance the President, Congress and the American people place on fighting drugs. The Intelligence Community, for its part, has increased its efforts in this area and will continue to do so.

In the long run, however, weakening the DCI's authorities will not enhance the nation's capabilities to fight the war on drugs. I have no doubt, though, that it will have an adverse impact on our ability to provide timely and meaningful intelligence information.

Thank you for the opportunity to comment on this important legislation. Both my staff and I stand ready to discuss the matter with you or your staff at your convenience.

The Office of Management and Budget advises that there is no objection to the submission of this report.

A copy of this letter is being provided to Senators Dole, Nunn, Glenn, Thurmond, Roth, Boren, and Cohen.

Sincerely yours,

/s/ William H. Webster

William H. Webster
Director of Central Intelligence

OCA 2950-88

SUBJECT: Sen. Byrd's letter regarding Drug Czar portion of the
Omnibus Anti-Drug Legislation

OCA/LEG/ [] (2 September 1988)

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CENTRAL INTELLIGENCE AGENCY



Director of Congressional Affairs

OCA 88-2953

2 September 1988

NOTE TO: The Director
The Deputy Director

This morning we finally got OMB's approval to send this letter to the Congress regarding our reservations about the overall "drug czar" bill, which undercuts DCI authorities. This letter has been coordinated with Russ Bruemmer and Leo Hazelwood. I recommend you sign it so that we can deliver it to Congressional offices no later than Tuesday, as the legislation will move the middle of next week.

This letter does not discuss the separate "anti-stonewalling amendment" that demands all Federal employees report illegal foreign drug activities to the Congress and GAO. We are still consulting with Justice and the White House on that subject and will have a separate letter, to a somewhat different set of Congressional players, ready to sign early next week.


John L. Helgerson

Attachment

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DATE -

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OCA 2863-88

FROM:

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Washington, D.C. 20505

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25 August 1988
OCA 2863-88

Mr. James Murr
Assistant Director, Legislative Reference
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Murr:

I write to advise you of the opposition of the Central Intelligence Agency to the "Anti-Stonewalling Act of 1988" (House Report No. 100-861, pp. 54-55), an amendment to be offered by Representative Alexander to the omnibus, anti-drug legislation that will probably be considered by the House of Representatives when it returns to session in September.

The amendment would require any Executive Branch employee obtaining information about "illegal foreign drug activities" to forward such information promptly to his agency head. The agency head, in turn, would be required to furnish it to Presidentially-designated law enforcement agencies and, upon request, to any committee of Congress and/or the General Accounting Office (GAO). Information could be withheld from the Presidentially-designated agencies under certain limited circumstances but only by the agency head on a non-delegable basis and only after notification to the President. The information would have to be disclosed, upon request, to any committee of the Congress and to the GAO. The President could withhold the information but would have to report to the Congress on his reasons therefor. GAO could sue to obtain the information in accordance with the provisions of 31 U.S.C. §716 et seq.

Our reasons for opposing this amendment are as follows:

Congressional Reporting Requirements

Our primary concern is with those portions of the amendment dealing with the Congress. Most important, the key phrase "information about illegal foreign drug activities" could be



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interpreted as requiring intelligence agencies to provide routinely to Congressional requesters raw, unevaluated intelligence reports. Currently, it is not our practice to forward such unevaluated reports on any subject to the Congress, even to the intelligence oversight committees. The proposed amendment would constitute a radical change in this area and would raise serious questions regarding the protection of sensitive intelligence sources and methods.

Moreover, by permitting any committee of the Congress to obtain such information on demand, the provision, in effect, gives every committee oversight of intelligence matters in this area. This, too, would be a radical departure from present practice, breaching the understanding between the Executive and Legislative Branches that oversight of intelligence activities be confined to the two intelligence committees.

Under present law (Title V of the National Security Act), the Director of Central Intelligence and the heads of the various agencies in the Intelligence Community are required to keep the committees "fully and currently informed" of intelligence matters. Pursuant to this provision, the Agency and the Community routinely provide the committees with a large body of narcotics intelligence information otherwise falling within the scope of the amendment. The amendment is thus, to some extent, duplicative of existing law.

The provision creates broad new rights of access for the General Accounting Office (GAO) to Executive Branch information, most especially intelligence information. As subsection (c) of the provision indicates, that right is, in fact, superior to the right of a Congressional committee to obtain the information. Moreover, GAO would be given the right to sue the agency involved to obtain the information in accordance with the provisions of 31 U.S.C. §716. This raises the prospect of a lawsuit between two branches of government over some of what could be the most sensitive information in the possession of the United States. Involvement of GAO in the process is particularly objectionable to the Agency since we have historically taken the position vis-a-vis GAO that Congressional oversight of intelligence activities should be limited to the intelligence committees.

The amendment does make provision for withholding information from the Congress but it is not satisfactory. Although not clear on the face of the provision, it appears that if an agency wishes to withhold information, it must go through the cumbersome process of obtaining Presidential

approval. In the event the President chooses to withhold information requested, he must notify the chairman and ranking minority member of the committee involved (the intelligence committees if it involves intelligence matters). We also see this scheme as sowing the seeds of future problems similar to those currently facing the Executive Branch with respect to Congressional notification of intelligence activities. These range from technical questions of the content and form of the notification to broader questions of what the Congress can do upon receipt of notification and the President's countervailing constitutional authorities in the area. In short, rather than helping to dampen any future conflicts, it will serve to institutionalize and sharpen them.

Intra-Executive Branch Reporting Requirements

We are also concerned with the intra-Executive Branch reporting requirements which the amendment would create. Insofar as the amendment creates such requirements for intelligence information, it unnecessarily duplicates long-standing, carefully-crafted administrative mechanisms for reporting such information within the Executive Branch. These include the requirement in Executive Order 12333 for Intelligence Community agencies to report to the Attorney General information which comes to their attention concerning federal crimes. They also include other such mechanisms which allow for the sharing of narcotics intelligence information with law enforcement agencies while, at the same time, protecting intelligence sources and methods from disclosure.

In fact, the Agency and the Community already share intelligence information of this sort on a routine basis and will undoubtedly share more in the upcoming years. In this regard, I note that the conferees on the Fiscal Year 1989 Intelligence Authorization bill in their conference report have requested the Director of Central Intelligence, the Secretary of Defense and the various law enforcement agencies to develop by 1 March 1989 a plan to expand cooperation even further. (House Report No. 100-879, p. 22.)

The statutory scheme with which the amendment would replace these administrative mechanisms is, by nature, inflexible. Mandatory involvement of the President and various agency heads adds to its inflexibility. More important, however, the scheme is an attempt to resolve by fiat that which has been an historical conflict between two constitutional areas of Presidential authority: his powers and duties to enforce the

laws of the United States, and his powers and duties to conduct the foreign relations and national defense of the United States. By mandating the reporting of such information to law enforcement agencies, the provision subordinates the President's national security powers and duties to his law enforcement powers and duties. We believe the conflict in this area is best handled on a case-by-case basis under existing mechanisms with ultimate resort to the President, if necessary. A statutory reporting scheme favoring law enforcement over national security would be an ill-advised constraint on Presidential flexibility.

We are also concerned with the term chosen to describe the information that "trips" the reporting requirement: "illegal foreign drug activities." This term is vague and subject to any number of interpretations. These will undoubtedly lead to underreporting or overreporting, which, in turn, will lead to further conflict within the Executive Branch and with the Congress.

I also note that there are some units of the Intelligence Community that are specifically tasked to collect narcotics intelligence information. This provision could undoubtedly be interpreted by some as requiring the entire product of these units to be used for law enforcement purposes. Again, we believe the uses of intelligence information vis-a-vis law enforcement activities should be established on a case-by-case basis, rather than by an inflexible rule.

Representative Alexander's introductory remarks (Congressional Record, 11 August 1988, pp. H 6848-54) indicate he introduced the amendment in reaction to positions taken by the Executive Branch in response to Congressional and GAO efforts to obtain information on various topics, including the drug trafficking in Central America and the relationship of the United States Government to Panamanian General Manuel Noriega.

The Agency has cooperated and continues to cooperate with the intelligence committees in response to their inquiries in these areas. Because of this, and our historical position vis-a-vis GAO, we indicated to GAO that we were not able to cooperate in their investigation.

We hope that Representative Alexander's concerns can be addressed other than through legislation. In any event, however, we trust that the Administration will take every appropriate action to oppose this provision. The Director of

Central Intelligence is prepared personally to contact appropriate Congressional leaders as a part of coordinated Administration action to oppose this amendment.

Thank you for the opportunity to comment on this important piece of legislation.

Sincerely,

[Redacted Signature]

John L. Helgeson
Director of Congressional Affairs

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SUBJECT: Anti-Stonewalling Act of 1988

D/OCA/JLH, [REDACTED] 24 Aug 88

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SUBJECT: Anti-Stonewalling Act of 1988

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